

ILL. C. C. DOCKET NO. 01-0338  
Ameritech Exhibit No. 8

STATE OF ILLINOIS

Witness

ILLINOIS COMMERCE COMMISSION

Date 6-21-01 Reporter JT

TDS Metrocom, Inc. )

Petition for Arbitration of Interconnection Rates )

Terms and Conditions and Related Arrangements with )

Illinois Bell Telephone Company d/b/a Ameritech )

Illinois Pursuant to Section 252(b) of the )

Telecommunications Act of 1996 )

01-0338

## CORRECTED DIRECT TESTIMONY

OF

MARCIA STANEK

ON BEHALF OF

AMERITECH ILLINOIS

Dated: May 22, 2001

ISSUES  
TDS-206  
TDS-212

1                   **CORRECTED DIRECT TESTIMONY OF MARCIA STANEK**  
2                   **ON BEHALF OF AMERITECH ILLINOIS**  
3                   **CASE NO. 01-0338**

4  
5   **Q.   PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

6   A.   Marcia Stanek, Manager, Ameritech, 350 N. Orleans Street, Chicago, Illinois 60654.

7   **Q.   PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL**  
8       **BACKGROUND AND YOUR CURRENT JOB RESPONSIBILITIES.**

9   A.   I have a B.A. from Smith College and an M.B.A. from Keller Graduate School of  
10       Management. In 1979 I joined Illinois Bell (Ameritech Illinois) where I have held  
11       various assignments in both retail and wholesale Marketing, as well as in the Regulatory  
12       Department. My current position is in Network Regulatory Policy and Planning, where I  
13       am responsible for issues related to pole, duct, conduit and right-of-way arrangements  
14       between Ameritech Illinois and CLECs.

15   **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16   A.   The purpose of my testimony is to explain Ameritech Illinois' position with regard to  
17       pole, duct, conduit and right-of-way issues in dispute in the arbitration proceeding  
18       between TDS Metrocom and Ameritech Illinois. Specifically, I will address Ameritech  
19       Illinois' position with respect to (1) the responsibility for securing franchises, consents  
20       and permits (Issue TDS-206) and (2) the unauthorized attachment fee (Issue TDS-212).

21   **ISSUE TDS-206: RESPONSIBILITY FOR SECURING FRANCHISES, CONSENTS,**  
22       **PERMITS**

23   **Q.   WHAT DISPUTED LANGUAGE IS THE SUBJECT OF THIS ISSUE?**

24   A.   TDS wants to include, in Section 2.1.2 of Appendix ROW, the following sentence:  
25       "SBC-AMERITECH will make all reasonable efforts to modify or amend Franchises or  
26       authorities from government agencies and to amend any agreements with private entities

1 to remove any restrictions or impediments to providing CLEC access to Structures.”

2 Ameritech Illinois opposes that language.

3 **Q. ON WHAT BASIS?**

4 A. Ameritech Illinois should not be required to act as an involuntary agent for another  
5 telecommunications carrier. Ameritech Illinois is not in the business of negotiating  
6 franchises or permits for others, nor does it wish to be. As a telecommunications carrier  
7 in the state of Illinois, TDS has the same statutory rights as Ameritech Illinois in regard  
8 to occupying public rights-of-way, authority to condemn, etc. 220 ILCS 5/8-509; 220  
9 ILCS 65/4. TDS should exercise these rights and handle any negotiations on its own  
10 behalf, instead of expecting others to do so for it. Moreover, TDS is certainly in the best  
11 position to negotiate on its own behalf.

12 **Q. HAS THE FCC ISSUED ANY ORDERS THAT RELATE TO THIS ISSUE?**

13 A. Yes. The FCC has held that “the right to exercise eminent domain is generally a matter  
14 of state law, exercised according to the varying limitations imposed by particular states.”

15 *In the Matter Of Implementation Of Local Competition Provisions In the*

16 *Telecommunications Act of 1996, CC Docket 96-98, Order on Reconsideration, 1999 WL*  
17 *969849, at ¶ 38 (rel. Oct. 26, 1999).*

18 Moreover, the FCC made clear that “section 224 does not create a federal requirement  
19 that a utility be forced to exercise eminent domain on behalf of third party attachers.” *Id.*

20 Thus, federal law does not require Ameritech Illinois to exercise eminent domain on  
21 behalf of TDS, and Illinois law makes such action unnecessary by affording TDS the  
22 same eminent domain rights as Ameritech Illinois.

23 **Q. TDS WITNESS LAWSON ASSERTS THAT AMERITECH ILLINOIS’**  
24 **PROPOSED LANGUAGE “. . . WOULD REQUIRE TDS METROCOM TO**  
25 **ATTEMPT NEGOTIATIONS FOR MODIFICATIONS TO A CONTRACT**

1 **BETWEEN THE OWNER AND AMERITECH.” (LAWSON DIRECT AT 34.)**  
2 **HOW DO YOU RESPOND?**

3 A. I do not agree. The disputed language addresses whether Ameritech Illinois or TDS  
4 should bear the burden of negotiating with third party property owners for access *by TDS*  
5 to property belonging to those third parties. Therefore, TDS would be negotiating its  
6 own agreement with the third party property owner.

7 **Q. MR. LAWSON IMPLIES THAT IT WOULD BE DIFFICULT TO ACCESS**  
8 **AMERITECH ILLINOIS’ STRUCTURE WITHOUT INCLUDING THE**  
9 **DISPUTED LANGUAGE IN SECTION 2.1.2 OF THE APPENDIX ROW.**  
10 **(LAWSON DIRECT AT 34.) HAVE OTHER PARTIES ACCESSING**  
11 **AMERITECH ILLINOIS’ STRUCTURE FOUND THIS TO BE TRUE?**

12 A. No, and Mr. Lawson does not offer any examples to support his contention. Typically  
13 the only permit an attaching party must obtain from a third party is a construction permit  
14 from the municipality. The Ameritech Structure Access Center has taken every  
15 reasonable step to ensure ease of access to the Structure Access product: *e.g.*, a service  
16 center (1-888-395-ASAC) and website <http://asac.ameritech.com>) exclusively devoted to  
17 Structure Access, and other carriers are not having difficulty with the process.

18 **Q. MR. LAWSON STATES THAT AMERITECH “... COULD CONCEIVABLY**  
19 **ESTABLISH RELATIONSHIPS THAT PREVENT TDS METROCOM FROM**  
20 **ACCESSING WHAT WOULD OTHERWISE BE AVAILABLE STRUCTURE.”**  
21 **(LAWSON DIRECT AT 34.) PLEASE RESPOND.**

22 A. Mr. Lawson’s claim is off-base. As I noted above, others are not having difficulty  
23 attaching to Ameritech Illinois’ Structure. Not surprisingly, Mr. Lawson does not point  
24 to any examples of Ameritech Illinois doing what he claims Ameritech Illinois “could  
25 conceivably” do.

1 **Q. HAS TDS ALREADY AGREED WITH THE AMERITECH ILLINOIS POSITION**  
2 **ELSEWHERE IN THE APPENDIX COVERING RIGHTS-OF-WAY, CONDUIT**  
3 **AND POLES?**

4 A. Yes, TDS has already agreed to the language in ROW Section 2.3.1: "CLEC shall be  
5 *solely* responsible to secure any necessary franchises, permits or consents from federal,  
6 state, county or municipal authorities and from the owners of private property, to  
7 construct and operate its Attachments at the location of the **SBC-AMERITECH**  
8 **Structure** it uses." (Emphasis added.) TDS's position on Section 2.1.2 is inconsistent  
9 with the language to which it has already agreed.

10 **ISSUE TDS-212: UNAUTHORIZED ATTACHMENT FEE**

11 **Q. UNDER WHAT CIRCUMSTANCES WOULD AMERITECH ILLINOIS**  
12 **CHARGE TDS THE UNAUTHORIZED ATTACHMENT FEE?**

13 A. If Ameritech Illinois discovered that TDS had placed an attachment on Ameritech  
14 Illinois' Structure without a valid permit, Ameritech Illinois would charge TDS a one-  
15 time unauthorized attachment fee for that attachment. By following the normal Structure  
16 Access process and obtaining a permit before placing an attachment, TDS would never be  
17 charged this fee.

18 **Q. WHAT IS THE UNAUTHORIZED ATTACHMENT FEE?**

19 A. The unauthorized attachment fee is equal to five times the annual attachment fee. As I  
20 note below, this is precisely in line with a recent FCC determination that a "five times"  
21 fee is reasonable.

22 **Q. WHY DOES TDS DISAGREE WITH THIS UNAUTHORIZED ATTACHMENT**  
23 **FEE?**

24 A. TDS does not dispute that there should be an unauthorized attachment fee, but it contends  
25 the standard fee is too high. TDS wants the fee to be only 1.5 times the annual rate.

1 **Q. BASED ON THE CURRENT AMERITECH ILLINOIS RATES, WHAT WOULD**  
2 **TDS BE CHARGED FOR AN UNAUTHORIZED ATTACHMENT?**

3 A. The annual rates are \$2.36 for a pole attachment and \$.41 per foot of occupied innerduct.  
4 At five times the annual rate, the unauthorized attachment fee would be \$11.80 for an  
5 unauthorized pole attachment and \$2.05 per foot of unauthorized, occupied innerduct.  
6 Obviously, these are not outrageous amounts, but Ameritech Illinois hopes they are high  
7 enough to discourage unauthorized attachments. Clearly, however, TDS's proposed fee  
8 of only 1.5 times the normal rate would not act as a meaningful deterrent.

9 **Q. WHY IS THE UNAUTHORIZED ATTACHMENT FEE NECESSARY?**

10 A. An unauthorized attachment fee is necessary in order to help ensure an orderly,  
11 nondiscriminatory and safe Structure Access process by deterring CLECs from  
12 improperly attaching equipment to Structure that is not permitted by the parties'  
13 interconnection agreement. Ameritech Illinois requires an occupancy permit in order to  
14 protect the network from attachments that could damage it and interrupt service to other  
15 CLECs and Ameritech Illinois. The unauthorized attachment fee is intended to deter  
16 CLECs from attaching equipment to Structure without a proper permit.

17 **Q. IN REFERRING TO UNAUTHORIZED ATTACHMENT FEES, MR. LAWSON**  
18 **STATES: "UNDER AGREEMENTS WITH OTHER UTILITIES, THERE**  
19 **TYPICALLY ARE NO PROVISIONS FOR THESE TYPES OF PENALTIES,**  
20 **AND THE PARTIES SIMPLY WORK OUT ANY DISCREPANCIES."**  
21 **(LAWSON DIRECT AT 35.) DO YOU AGREE WITH THIS STATEMENT?**

22 A. No, unauthorized attachment fees are a standard feature of agreements granting a party  
23 access to another party's Structure. I am not sure what Mr. Lawson refers to when he  
24 speaks of "agreements with other utilities," but I note that he provides no examples or  
25 elaboration.

1 **Q. HAS THE FCC ISSUED ANY ORDERS ON UNAUTHORIZED ATTACHMENT**  
2 **FEES?**

3 A. Yes, in a complaint case last year, the FCC held that "[u]nauthorized penalty fees are not  
4 per se unreasonable," and noted that "Complainant offers evidence to demonstrate that  
5 industry practice is to impose a penalty of \$15.00 to \$25.00 or one based upon a limited  
6 number of years." Complaint Case DA 00-1476, File No. PA 98-003 (released June 30,  
7 2000), ¶¶ 10, 14. The FCC further noted that "[t]he information submitted by  
8 Complainant summarizes our experience and demonstrates that an amount equal to no  
9 more than five years annual fee is reasonable." *Id.*, ¶ 14.

10 **Q. PLEASE RESPOND TO MR. LAWSON'S STATEMENT: "... THERE COULD**  
11 **BE INSTANCES WHERE CONTRACTORS PERFORMING WORK GET**  
12 **AHEAD OF A SCHEDULE AND MAKE AN ATTACHMENT AHEAD OF THE**  
13 **ISSUANCE OF THE ACTUAL PERMIT." (LAWSON DIRECT AT 35.)**

14 A. It is not unreasonable to expect TDS to provide their contractors with the proper direction  
15 and supervision that would prevent an unauthorized attachment. For example, if TDS  
16 submitted an application to attach to 200 poles in one wire center, TDS's contractor  
17 would have no right to place any of those attachments in that wire center until the  
18 issuance of the occupancy permit for those poles.

19 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

20 A. Yes, it does.